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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KIRBY SPENCER, individually and on behalf of all others similarly situated, Plaintiff, v. AT&T DIGITAL LIFE, INC., a foreign corporation doing business in Nevada, Defendant.	CASE NO. 2:14-cv-01136-RFB-(PAL) **DECLARATION OF JOEL D. SMITH IN SUPPORT OF AT&T DIGITAL LIFE INC.'S SECOND MOTION FOR SUMMARY JUDGMENT**

I, Joel D. Smith, pursuant to 28 U.S.C. § 1746, declare that the following is true and correct under penalty of perjury:

1. I am an attorney at Crowell & Moring, LLP, counsel of record for defendant AT&T Digital Life, Inc. ("AT&T"). I have personal knowledge of the matters set forth in this declaration and, if called as a witness, I could and would testify competently thereto. This declaration is being submitted in support of AT&T's Second Motion for Summary Judgment.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the Declaration of Alejandro Olea in Support of AT&T's Second Motion for Summary Judgment.

3. Attached hereto as **Exhibit 2** is a true and correct copy of the Declaration of Homi Torab in Support of AT&T's Second Motion for Summary Judgment.

4. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts of the Digital Life User Guide, which were produced by AT&T in this litigation with bates numbers ATT000006-77, and which are authenticated in the Declaration of Alejandro Olea at ¶ 6.

5. Attached hereto as **Exhibit 4** is a true and correct copy of screenshots of AT&T's public website describing the Digital Life service, which were produced by AT&T in this litigation with bates numbers ATT000078-81, and which are authenticated in the Declaration of Alejandro Olea at ¶ 7.

6. On November 14,2014, Plaintiff Kirby Spencer produced with his initial disclosures in this litigation photographs that purport to depict Digital Life text alerts that he allegedly received, and he produced the same photographs again on February 9, 2015 in response to document requests propounded by AT&T. Attached hereto as **Exhibit 5** are true and correct copies of examples of the photographs that Mr. Spencer produced, which, apart from the date and time information shown in the photographs, are substantially similar to all of the photographs produced by Mr. Spencer. The photographs are deemed authenticated because Mr. Spencer produced them. *See, e.g.*, *Haack v. City of Carson City*, 2012 WL 3638767 *7 (D. Nev. Aug. 22, 2012) (documents produced by a party in discovery deemed authentic when offered by the opposing party).

7. Attached hereto as **Exhibit 6** is a true and correct copy of excerpts of customer service records concerning Digital Life customer Ms. Salazar, which were produced by AT&T in this litigation with bates ATT000001, and which are authenticated in the Declaration of Alejandro Olea at ¶ 14.

8. Attached hereto as **Exhibit 7** is a true and correct screenshot of the Digital Life online account management tool log-in screen, which was produced by AT&T in this litigation with bates number ATT000164, and which is authenticated in the Declaration of Homi Torab at ¶ 7 and also in the Declaration of Alejandro Olea at ¶ 9, n.1.

9. Attached hereto as **Exhibit 8** are true and correct screenshots of the "Set Up Notifications/ Select Where to Send" section of the Digital Life online account management tool, which were produced by AT&T in this litigation with bates ATT000410-13, and which are authenticated in the Declaration of Homi Torab at ¶ 9 and also in the Declaration of Alejandro Olea at ¶ 9, n.1.

10. Attached hereto as **Exhibit 9** are true and correct screenshots of the "Name and Save Programs" section of the Digital Life online account management tool, which were produced by AT&T in this litigation with bates ATT000414-15, and which are authenticated in the Declaration of Homi Torab at ¶ 11 and also in the Declaration of Alejandro Olea at ¶ 9, n.1.

11. Attached hereto as **Exhibit 10** is a true and correct copy of excerpts of the First Amended Complaint filed in this action, as well as Exhibits 1-3 that were attached to the First Amended Complaint (Docket No. 51).

12. Attached hereto as **Exhibit 11** is a true and correct copy of FCC, *Consumer Guide: Unwanted Telephone Calls* (Oct. 8, 2014), taken from the FCC website at http://www.fcc.gov/guides/unwanted-telephone-marketing-calls on December 5, 2014. As set forth in AT&T's concurrently-filed Request for Judicial Notice, the Court may take judicial notice of Exhibit 11.

13. Attached hereto as **Exhibit 12** is a true and correct copy of relevant excerpts of the deposition transcript of Plaintiff Kirby Spencer, taken in this action on March 19, 2015. Mr. Spencer's counsel removed the confidentiality designation via email dated April 15, 2015.

14. Attached hereto as **Exhibit 13** is a true and correct copy of relevant excerpts of the deposition transcript of Randall Snyder, taken in this action on March 18, 2015. Mr. Spencer's counsel removed the confidentiality designation via email dated April 15, 2015.

15. Attached hereto as **Exhibit 14** is a true and correct copy of relevant excerpts of the Declaration/Expert Report of Randall Snyder, served by Mr. Spencer in this action on February 23, 2015, and authenticated in the deposition of Mr. Snyder at 8:13-22 and 15:11-16.

16. Attached hereto as **Exhibit 15** is a true and correct copy of relevant excerpts of Plaintiff's Supplemental Response to Defendant AT&T Digital Life, Inc.'s Interrogatories (Set One), served by Mr. Spencer in this action on April 15, 2015. Mr. Spencer's counsel removed the confidentiality designation for the excerpted portion attached as Exhibit 15 via email dated May 8, 2015.

17. Attached hereto as **Exhibit 16** is a true and correct copy of relevant excerpts of the deposition transcript of Alejandro Olea, taken in this action on April 13, 2015.

18. Attached hereto as **Exhibit 17** is a true and correct copy of relevant excerpts of the deposition transcript of Homi Torab, taken in this action on April 22, 2015.

19. Attached hereto as **Exhibit 18** is a true and correct copy of relevant excerpts of Plaintiff's Response in Opposition to AT&T's first motion for summary judgment, filed in this action on June 29, 2015 (Doc. No. 42).

20. Attached hereto as **Exhibit 19** is a true and correct copy of a press release issued by the FCC on June 18, 2015. As set forth in AT&T's concurrently-filed Request for Judicial Notice, the Court may take judicial notice of Exhibit 19.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in San Francisco, California on November 25, 2015.

Joel D. Smith

CERTIFICATE OF SERVICE

I, Joel D. Smith, state:

My business address is 275 Battery Street, 23rd Floor, San Francisco, California 94111. I am over the age of eighteen years and not a party to this action.

On the date set forth below, I served via electronic service the foregoing document(s) described as:

DECLARATION OF JOEL D. SMITH IN SUPPORT OF AT&T DIGITAL LIFE INC.'S SECOND MOTION FOR SUMMARY JUDGMENT

on the following person(s) in this action:

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DATED: November 25, 2015 BY: /s/ Joel D. Smith
Joel D. Smith